

JUDGE RAKOFF

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

12 CIV 5967

ROLAND J. DE FRIES,

X

: Civil Action No:

Plaintiff,

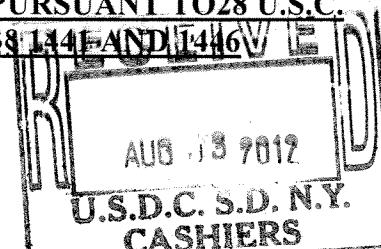
:

- against -

: **NOTICE OF REMOVAL**
: **TO FEDERAL COURT**
: **PURSUANT TO 28 U.S.C.**PETER ZANDER PHOTOGRAPHY and GETTY IMAGES,
INC.,: ~~§§ 1441 AND 1446~~

Defendants.

:



PLEASE TAKE NOTICE THAT pursuant to 28 U.S.C. §§ 1441 and 1446 defendant

Peter Zander, Inc., improperly named herein as PETER ZANDER PHOTOGRAPHY (hereinafter "PZP") by and through its undersigned counsel, hereby timely removes this action from the Supreme Court of the State of New York, County of New York. In support of such removal PZP states as follows:

1. Plaintiff commenced this action captioned Roland J. De Fries v. Peter Zander Photography, et al., Index No.: 12103188, on or about July 3, 2012, by filing a Summons and Complaint in the Supreme Court of the State of New York, New York County (hereinafter "State Court Action"). A copy of the Summons and Complaint are annexed hereto as Exhibit "1".
2. The Complaint in the State Court Action alleges that defendant PZP and co-defendant GETTY IMAGES, INC. (hereinafter "Getty") violated numerous state and federal laws, including copyright infringement. Allegations of copyright infringement are governed by federal statute 17 U.S.C. § 501 entitled "Infringement of copyright".
3. The removal statute 28 U.S.C. § 1441 states in pertinent part:
 - a. Except as otherwise expressly provided by Act of Congress, any civil action brought in a State court of which the district courts of the United States have original jurisdiction, may be removed by the defendant or the defendants, to the

district court of the United States for the district and division embracing the place where such action is pending. For purposes of removal under this chapter, the citizenship of defendants sued under fictitious names shall be disregarded.

- b. Any civil action of which the district courts have original jurisdiction founded on a claim or right arising under the Constitution, treaties or laws of the United States shall be removable without regard to the citizenship or residence of the parties. Any other such action shall be removable only if none of the parties in interest properly joined and served as defendants is a citizen of the State in which such action is brought.
 - c. Whenever a separate and independent claim or cause of action within the jurisdiction conferred by section 1331 of this title is joined with one or more otherwise non-removable claims or causes of action, the entire case may be removed and the district court may determine all issues therein, or, in its discretion, may remand all matters in which State law predominates.
4. This Court has original jurisdiction over this action under 28 U.S.C. § 1331 because the claims against defendants arise under the laws of the United States.
5. As a civil action founded upon a claim of right arising under the laws of the United States, this action may be removed to this Court pursuant to the provisions of 28 U.S.C. § 1441.
6. This Notice of Removal is timely as it is being filed within thirty (30) days of PZP's first knowledge of the Complaint as required by 28 U.S.C. § 1446 (b). PZP, with the filing of this removal petition, does not waive any of its defenses, including, but not limited to lack of personal jurisdiction for improper service. In fact, upon removal and the assignment of a judge, PZP will seek permission of the court to file a motion to dismiss.
7. Although co-defendant Getty has yet to be served, counsel for Getty has consented to the removal of the State Court Action.
8. Written notice of the filing of this Notice of Removal has been given to Plaintiff, co-defendant Getty and a copy of the Notice of Removal will also promptly be filed with the Clerk of the Supreme Court of the State of New York, New York County.

WHEREFORE defendant PETER ZANDER PHOTOGRAPHY respectfully requests that this Court assume jurisdiction over this action and make such further orders as herein as may be required to properly determine its controversy.

Dated: New York, New York
August 3, 2012

Yours, etc.,

WILSON, ELSER, MOSKOWITZ, EDELMAN & DICKER LLP

By:

Thomas A. Leghorn

Cori A. Rosen

Attorneys for Defendant

PETER ZANDER PHOTOGRAPHY

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